No. 80-798

In the Supreme Court of the United States

OCTOBER TERM, 1980

WILLIAM A. MCFARLAND, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

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Petitioner contends that he was improperly prosecuted under the general false statement statute (18 U.S.C. 1001), rather than under 7 U.S.C. 1314(a), and that a government agent obtained a written statement from him in violation of his constitutional rights.

Following a jury trial in the United States District Court for the Middle District of North Carolina, petitioner was convicted of causing false entries to be made on an agricultural marketing card in connection with the sale of tobacco to the United States Department of Agriculture, in violation of 18 U.S.C. 1001. He was sentenced to 18 months' imprisonment. The court of appeals affirmed per curiam (Pet. App. 1a-3a; A. 14).[1]

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[1] "A." refers to the joint appendix filed in the court of appeals.

The evidence at trial showed that petitioner owned a farm on which his tenants raised tobacco. Accordingly, the Agricultural Stabilization and Conservation Service issued petitioner market allotment cards for tobacco grown on his land. Petitioner, however, in exchange for a 20 cent per pound fee, permitted a tobacco warehouse to use his market allotment cards to sell tobacco grown elsewhere. False entries were made on the cards misidentifying various quantities of tobacco, and some of that tobacco was sold to the Department of Agriculture under the price stabilization program. Petitioner received $9,343.20 from the warehouse in return for this use of his cards (A. 62, 128-129, 141-143).

1. Without denying that his cards contained false entries, petitioner contends (Pet. 6-7) that he was improperly prosecuted under the general false statement statute (18 U.S.C. 1001). He claims that his conduct was governed solely by 7 U.S.C. 1314(a), which provides specific civil penalties for violations of the tobacco marketing quota system.

As the court of appeals correctly found (Pet. App. 1a-2a), this contention is squarely refuted by *United States* v. *Gilliland*, 312 U.S. 86 (1941). *Gilliland* involved a criminal prosecution under the predecessor of Section 1001 for falsifying reports that were required to be filed by regulations promulgated pursuant to the "Hot Oil" Act, which prohibited the interstate transportation of "contraband oil." In that case, this Court rejected the claim that the regulatory statute was intended to repeal the general false statement statute insofar as the latter applied to false statements relating to "hot oil" (*id.* at 95-96):

> There was no express repeal and there was no repugnancy in the subject matter of the two statutes which would justify an implication of repeal. The [predecessor of Section 1001], with its provision as to false and fraudulent papers, has its place as a fitting complement to the ["Hot Oil" Act] as well as to other statutes under

> which, in connection with the authorized action of governmental departments or agencies, the presentation of affidavits, documents, etc., is required.

This rationale controls the present case as well.[2] See also *United States* v. *Batchelder*, 442 U.S. 114 (1979).

2. Petitioner also contends (Pet. 7-8) that his inculpatory written statement should have been suppressed because it was obtained in violation of his constitutional rights. Specifically, he claims (Pet. 4-6) that the agent who took his statement questioned him in spite of his assertions that he did not understand his *Miranda* rights and that he was going to get an attorney, threatened him with long term imprisonment and heavy fines if he did not answer the questions, and told him that he was not the subject of the investigation and would be given favorable treatment if he cooperated. Petitioner further asserts that he signed the written statement (which, he suggests, was based on a hypothetical question posed by the agent) without reading it and only in order to satisfy the agent's demand for a handwriting exemplar.

This claim, however, is based solely upon a selective recitation of petitioner's own testimony at the suppression hearing. He fails to mention the directly contradictory testimony of the agent to whom he gave the statement. Nor does petitioner mention the portions of his own testimony that conflict with his present contention. Both the district court (Pet. App. 3a) and the court of appeals (Pet. App. 2a) found that petitioner had been fully advised of his *Miranda* rights and that his statement was made freely, voluntarily

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[2]Petitioner asserts (Pet. 7) that he "is not arguing repeal by implication; rather, he is merely requesting the Court to determine the Congressional intent behind two overlapping statutes." The only relevant congressional intent, however, is whether Congress intended a partial repeal by implication.

and knowingly.[3] Accordingly, further review of this fact-bound question is unwarranted. See *United States* v. *Reliable Transfer Co.*, 421 U.S. 397, 401 n.2 (1975); *Berenyi* v. *Immigration Director,* 385 U.S. 630, 635 (1967).

In any event, the record fully supports the conclusion reached by both courts. The agent testified that he met petitioner in the local Agricultural Stabilization and Soil Conservation Office on August 31, 1977. After the agent read him a statement of his *Miranda* rights, petitioner stated that he understood his rights and that he would answer questions without the presence of counsel, but that he would not sign the waiver of rights form (A. 20-21, 25-26). According to the agent, petitioner gave no indication that he wished to leave (A. 41-42) or to consult an attorney (A. 56). At no time during the interview did the agent make any promises or threats to petitioner (A. 26). Specifically, the agent denied threatening petitioner with imprisonment and fines (A. 42-44, 57), promising help with the United States Attorney if petitioner cooperated in making a case against the warehouse (A. 47), or telling petitioner that he could not interfere with the investigation (A. 43).

The agent further testified that it was petitioner who brought up the hypothetical case and that petitioner thereafter admitted that the hypothetical was in fact what had happened (A. 57-59). The agent stated that after petitioner's statement was transcribed, petitioner read the typewritten statement before he signed it (A. 28). Petitioner himself acknowledged on cross-examination that the agent advised him of his rights (A. 83) and that he understood them (A. 92-93). Petitioner also stated that he was never told that he was under arrest and that he presumed that he would have

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[3]The district court also found (Pet. App. 3a) that the questioning of petitioner was noncustodial.

been free to leave if he had desired to do so (A. 83, 90-91).[4] On this record, there was ample basis for the district court to determine that petitioner's statement was voluntarily and knowingly given. See *North Carolina* v. *Butler*, 441 U.S. 369, 373-375 (1979); *Lego* v. *Twomey*, 404 U.S. 477, 489 (1972).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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[4]The agent testified that petitioner was not under arrest and was not told that he was under arrest, and that his movements were in no way restricted (A. 21-22).